

CHAPTER NO. 782

HOUSE BILL NO. 3479

By Representatives McMillan, Hargrove, Maddox

Substituted for: Senate Bill No. 3419

By Senators Crutchfield, Clabough

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 6, relative to the sales and use tax.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-102(a)(32), is amended by deleting the current language and by substituting instead the following:

(A) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications services" includes such transmission services in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such services are referred to as enhanced or value added services.

(B) The term "Telecommunication service" does not include:

1. Information services. "Information services" as used in this section means the offering of a capability that allows data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of the underlying transaction is the data. "Information services" does not include the processing or manipulation of data where the primary purpose of the underlying transaction is to allow the transmission, conveyance or routing of the data. "Information services" does not include the management, control or operation of a telecommunications system;

2. Installation or maintenance of wiring or equipment on a customer's premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services regardless of the medium;

8. Ancillary services; or

9. Digital products delivered electronically, including but not limited to software, downloaded music or reading materials.

SECTION 2. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as new, appropriately numbered subdivisions:

() “Ancillary services” means services as hereinafter provided that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing, directory assistance, vertical service, and voice mail services.

(A) “Detailed telecommunications billing service”, which means the ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

(B) “Directory assistance”, which means the ancillary service of providing telephone number information, and/or address information.

(C) “Vertical service”, which means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections.

(D) “Voice mail services”, which means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

() “International”, as used in connection with telecommunication services, means an electronic transmission service that originates or terminates in the United States (including the District of Columbia or U.S. territory or possession) and terminates or originates outside the United States (including the District of Columbia or U.S. territory or possession)

() “Interstate”, as used in connection with telecommunication services, means an electronic transmission service that originates in one U.S. state (including the District of Columbia or U.S. territory or possession) and terminates in a different US state (including the District of Columbia or U.S. territory or possession.)

() “Intrastate”, as used in connection with telecommunication services, means an electronic transmission service that originates in one U.S. state (including the District of Columbia or U.S. territory or possession) and terminates in the same U.S. state (including the District of Columbia or U.S. territory or possession).

() “Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

() “Residential service”, as used in connection with telecommunication services, means an electronic transmission service provided to an individual for

personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications services is considered residential if it is provided to and paid by an individual resident rather than the institution.

SECTION 3. Tennessee Code Annotated, Section 67-6-102(a), is amended by adding the following as a new, appropriately numbered subdivision:

() "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

SECTION 4. Tennessee Code Annotated, Section 67-6-102(a), is amended by deleting subdivisions (15) [definition of "interexchange carrier"], (19) [definition of "local exchange carrier"], (20) [definition of "long distance reseller"] and (24) [definition of "private line service"].

SECTION 5. Tennessee Code Annotated, Section 67-6-102(a)(25)(F)(iii), is amended by deleting the present language and substituting instead the following:

(iii) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services;

SECTION 6. Tennessee Code Annotated, Section 67-6-102(a)(25)(F), is amended by adding the following:

(x) The furnishing, for a consideration, of ancillary services;

SECTION 7. Tennessee Code Annotated, Section 67-6-205, is amended by deleting subdivision (c)(3) and substituting instead the following:

(c)(3) The furnishing, for a consideration, of intrastate, interstate or international telecommunication services.

SECTION 8. Tennessee Code Annotated, Section 67-6-205(c), is amended by adding the following new, appropriately numbered subdivision:

() The furnishing, for a consideration, of ancillary services.

SECTION 9. Tennessee Code Annotated Section 67-6-221(a), is amended by deleting the present language and substituting instead the following:

(a) Notwithstanding any other provision of the law to the contrary, interstate or international telecommunication services sold to businesses shall be subject to a tax imposed at the rate of seven and one-half percent (7.5%).

SECTION 10. Tennessee Code Annotated, Section 67-6-329(a), is amended by adding the following as a new, appropriately numbered subdivision:

()(A) Charges for the following services are exempt from the tax imposed by this chapter:

(i) Public pay telephone services. This exemption shall not apply to public pay telephone services that are post-paid calling services as defined in the provisions of part 9 of this chapter;

(ii) Automatic teller machine (ATM) service. The seller of the ATM service shall be deemed the user and consumer of telecommunication services necessary to deliver the ATM service; and

(iii) Wire transfer or other services provided by any corporation defined as a financial institution under § 67-4-2004(8). The seller of the wire transfer or other services shall be deemed the user and consumer of telecommunication services necessary to deliver the wire transfer service.

SECTION 11. Tennessee Code Annotated, Section 67-6-342, is amended by inserting the words "made between local exchange carriers and interexchange carriers" between the words "Charges" and "for" in subsection (b) and is further amended by adding the following new subsection:

(c) For purposes of this section:

(1) "Interexchange carrier" is a telecommunications service provider which provides such service only between local access and transport areas (LATAs);

(2) "Local exchange carrier" is a telecommunication service provider which provides such service only within a local access and transport area (LATA); and

(3) "Long distance reseller" is a telecommunication service provider which provides service within a local access and transport area (LATA) and between local access and transport areas.

SECTION 12. Tennessee Code Annotated, Title 67, Chapter 6, Part 5, is amended by adding the following new section:

67-6-539.

(a) For purposes of this section, a "bundled transaction" means the retail sale of otherwise distinct and identifiable products for one non-itemized price that does not vary and is not negotiable based on the selection of the products made by the purchaser.

(b) In the case of a bundled transaction of telecommunications services, ancillary services or Internet access, if the price is attributable to services that are taxable and services that are nontaxable, the portion of the price attributable to the nontaxable services shall be subject to tax unless the provider can reasonably identify such portion from its books and records kept in the regular course of business for purposes other than sales taxes.

(c) In the case of a bundled transaction of telecommunications services or ancillary services, if the price is attributable to services that are subject to tax at different rates, the total price shall be treated as attributable to the services subject to tax at the higher combined state and local tax rate unless the provider can reasonably identify the portion of the price attributable to the services subject to tax at the lower rate from its books and records kept in the regular course of business for purposes other than sales taxes.

(d) For purposes of this section, if the taxes that would have otherwise been collected on the distinct and identifiable services would have been

designated to different funds or purposes, such designation shall be based on the same allocation utilized in (b) or (c). However, if the total of the bundled transaction was subjected to tax or subjected to tax at the higher combined state and local rate a reasonable allocation method approved by the commissioner shall be made for designation of the taxes to the different funds or purposes.

(e) The provisions of this section shall apply to bills submitted to customers that are dated on or after July 1, 2004.

SECTION 13. Tennessee Code Annotated, 67-6-702(g), is amended by deleting the current language and substituting instead the following:

(g)(1) Notwithstanding any other provisions of this chapter, local tax with respect to interstate or international telecommunications services, which are subject to state tax, shall be imposed at the rate of one and one-half percent (1.5%); provided, that interstate and international telecommunication services to businesses are exempt from local tax.

(2) Notwithstanding any other provisions of this chapter, local tax with respect to intrastate telecommunications services and ancillary services, which are subject to state tax, shall be imposed at the rate of two and one-half percent (2.5%).

SECTION 14. Tennessee Code Annotated, Title 67, Chapter 6 is amended by adding the following new part:

PART 9

67-6-905.

(a) Except for the defined telecommunication services in subsection (c), the sale of telecommunication service sold on a call-by-call basis shall be sourced to (i) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (ii) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c), a sale of telecommunications services sold on a basis other than a call-by-call basis and ancillary services are sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service is sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act, codified at 4 U.S.C. §§ 116-126.

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(d) For the purpose of this section, the following definitions apply:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under this section. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(7) "Home service provider" means the same as that term is defined 4 U.S.C. § 124(5).

(8) "Mobile telecommunications service" means the same as that term is defined in 4 U.S.C. § 124(7).

(9) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(10) "Post-paid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(11) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(12) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(B) If the location in subdivision (d)(12)(A) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(C) If the locations in subdivisions (d)(12)(A) and (d)(12)(B) are not known, the service address means the location of the customer's place of primary use.

SECTION 15. Tennessee Code Annotated, Section 67-6-102, is amended by deleting subsection (b) in its entirety.

SECTION 16. Tennessee Code Annotated, Section 67-6-532, is amended by adding the following as a new, appropriately lettered subsection:

() Any term appearing in this section, if defined in § 67-6-905(d), shall have the same meaning as in that section.

SECTION 17. Tennessee Code Annotated, Section 67-6-356, is amended by inserting the words "and international telecommunication" following the words "interstate telecommunications" each time they appear.

SECTION 18. The provisions of this Act shall not modify, impair, supercede or authorize the modification, impairment or supersession of any provision of the Mobile Telecommunications Sourcing Act, codified at 4 U.S.C. §§ 116-126.

SECTION 19. Tennessee Code Annotated, Title 67, Chapter 6, Part 3, is amended by adding the following new sections:

67-6-3__.

(a) Private communications services shall be exempt from the tax imposed by this chapter, when such services are utilized for communications with a computer or telecommunications center located in this state, by a taxpayer that has qualified for the headquarters tax credit provided for in § 67-6-224, or by an affiliate of such taxpayer.

(b) For purposes of this section "affiliate" means the same as defined in § 48-103-102(1).

(c) No dealer shall sell private communications services under the claim that such services are exempt from tax pursuant to this section, unless the purchaser shall have issued to it by the commissioner an authorization declaring that such purchaser is entitled to the exemption. The dealer shall maintain a copy of such authorization in the dealer's records to document that the purchaser was entitled to the exemption.

(d) This exemption shall apply for so long as such qualified headquarters facility is located in this state.

67-6-3__.

The tax levied by this chapter shall not apply to sales of telecommunications services between affiliates, when one of the entities that is a member of the affiliated group has qualified for the headquarters tax credit provided for in § 67-6-224. The entity that purchases the telecommunications services from a vendor that is not a member of the affiliated group shall be deemed the user and consumer of such services, and shall pay the appropriate tax on such services. For purposes of this section "affiliate" means the same as defined in § 48-103-102(1). This exemption shall apply for so long as such qualified headquarters facility is located in this state.

SECTION 20. Section 79 of Public Acts 2003, ch. 357, is repealed and shall not take effect, the public welfare requiring it.

SECTION 21. Sections 7 and 8 of this Act shall take effect at 12:02 a.m. of the effective date of Public Acts 2003, ch. 357, the public welfare requiring it.

SECTION 22. Sections 3, 5, 6, 9, 13, and 14 of this Act shall take effect for bills that are submitted to customers that are dated on or after July 1, 2004, the public welfare requiring it. These sections shall remain in effect until the effective date of Public Acts 2003, ch. 357, at which time these sections shall be repealed, the public welfare requiring it.

SECTION 23. The remaining provisions of this Act shall take effect on July 1, 2004, the public welfare requiring it, and shall apply to bills that are submitted to customers on or after July 1, 2004.

PASSED: May 10, 2004



JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 28th day of May 2004



PHIL BREDEZEN, GOVERNOR